CHASE

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November 20, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551.

Re: Docket No. R-1370

Dear Ms. Johnson:

I. INTRODUCTION AND OVERVIEW

JPMorgan Chase & Co. and its subsidiaries ("Chase") appreciate the opportunity to comment on the proposed revisions to amend Regulation Z, which implements the Truth in Lending Act ("TILA"), and the Regulation Z Official Staff Commentary ("Commentary") to the Regulation (the "Proposal"), published in the Federal Register on October 21, 2009 by the Board of Governors of the Federal Reserve (the "Board").

We appreciate and applaud the Board's effort to ensure consumers have access to clear, relevant and understandable information, to empower them to manage credit products. We at Chase share that objective, believing that the market for payment cards and the economy as a whole are strengthened when consumers make informed decisions. Overall, we support the Proposal. Given the time constraints the Board and the industry are operating under we have limited our comments to several key points. We are pleased to offer these specific comments, which are organized by topic, with citations to appropriate sections of the Proposal.

II. EFFECTIVE DATES

The Board has requested comment about whether the effective date of any provisions of the Proposal should be effective July 1, 2010. We believe all provisions should continue to be effective as of the originally published date of July 1, 2010 unless required to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act). We understand the Board will not publish the final rules no sooner than late December. So banks cannot know which non-required provisions will be moved forward and what they will require. Further, allowing additional time to comply with the non-CARD Act requirements will greatly

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assist banks by allowing them to concentrate resources on efforts to become compliant with the CARD Act requirements by February 22, 2001. Changes that should continue to be effective after February 22, 2010 include the chart format requirements, including those for which 10-point font is required, billing statement changes other than those mandated by the CARD Act, the dispute resolution procedures, and any other provisions unrelated to the CARD Act. Banking institutions already face a heavy implementation burden given the sheer volume of changes mandated by the CARD Act and the Proposal, and must do so in the unusually abbreviated period of time remaining for implementation. To defer additional changes until July 1, 2010 would be consistent with both sound principles of regulatory implementation and past practice, and would allow creditors to continue to follow implementation plans already in place related to prior Reg. Z and Reg. AA (under the "UDAP Proposal") rule changes. Creditors have been relying on the many past provisions both of Reg. Z and the UDAP Proposal, as well as the newly enacted CARD Act, to implement detailed work plans. As the Board knows, there are very tight time schedules to develop all the necessary systems changes, revised disclosures and processes to become compliant with all the rules.

These regulatory requirements require each creditor to significantly overhaul almost every technology and operations area, along with significant changes such as in consumer communications, servicing policies, and processes. Such a mammoth undertaking is without precedence in a particular lending area. Acceleration of the effective dates for non-CARD Act requirements will compromise our ability to adequately test system and process changes and to adequately train our employees to support the new regulations, resulting in potentially significant compliance risk and unintended negative consequences for our customers. While creditors have been actively working towards implementation of prior rules and proposals, the Board with each new Proposal changes past rules/proposals which, in turn, requires creditors to redo and enhance their systems and operational work plans. Rather than simply accelerating these work plans, creditors must also reconsider the requirements and expected outcomes from those plans.

We understand that there is some sentiment that the Board accelerate the compliance date for all of latest Proposal. However, it is impractical and would be an unsafe and unsound banking practice to require banking institutions to be in full compliance with the Proposal that will not be final until sometime in December 2009 and possibly January 2010. A little over one month is simply not enough time to make all the required changes. The industry has stressed this point over the past two years. In this case, the concern is unusually salient, and we urge that creditors be allowed more time to comply with provisions not mandated by the CARD Act.

III. TRANSITION RULES NEED TO BE REASONABLE

Chase urges the Board to adopt an approach for the Proposal's transition rules consistent with the approach taken in the Interim Rule this would include permitting a default that occurs before the effective date to trigger a rate increase after the effective date. Our concerns are best illustrated by an example.

First, assume, an account has exceeded the credit limit. Chase would presently send the consumer a 45-day advance notice advising that all balances on the consumer's account would be increased to the penalty rate specified in the consumer's agreement. If, however, the consumer were to go overlimit on February 1, 2010, that notice and the implementation of the rate on account balances could not occur until March 17, 2010, obviously after the effective date of the Proposal. The Interim Rule would have permitted creditors to apply the higher rate to outstanding balances in this example.

In its approach to the August 20 rules, the Board recognized that imposing the restrictions on events and processes that took place or began prior to August 20 would extend the reach of Regulation Z back to points before its effective date. This would have been illogical and would have resulted in chaos. We urge the Board to adopt the same, reasoned approach it took in its Interim Rule.

IV. EXCEPTION FROM CHANGE IN TERMS FOR PROMOTIONAL APRs

We seek clarification of the requirements of Section 226.9(c)(2)(v)(b)(2) to disclose the length of the promotional rate period and "go to" rate in close proximity and equal prominence to the promotional rate. The Supplementary Information suggests this rule applies to "any" disclosure of the promotional rate, though the word "any" does not appear in the rule itself. We believe this narrow interpretation may be unintended. In any event, it is impractical and unnecessary to repeat the length of the promotional period and the "go to" rate every time the promotional rate is disclosed. We suggest that instead it be clarified that this disclosure requirement must only be stated in a prominent location and format closely proximate to the first listing of the promotional rate. This would be consistent with the similar disclosure requirement for advertising at Section 226.16(g)(4), and the requirement to provide a single disclosure in a chart format on the front of a page containing checks that access a credit card account access at Section 226.9(b)(3).

V. "IN WRITING" REQUIREMENT FOR WORKOUT ARRANGEMENTS

The CARD Act provides a "workout exception" allowing a creditor to return APRs and certain fees that existed prior to the workout program so long as the consumer receives clear and conspicuous disclosure of the terms prior to commencement of the program. The Proposal adds the requirement that this disclosure be "in writing." By requiring the disclosures of the workout terms to be *in writing* before the workout arrangement can commence, the Board disadvantages consumers from receiving favorable workout terms immediately upon agreement with creditors.

Typically, workout arrangements between a creditor and consumer are negotiated over the telephone. There are a number of reasons for this, such as the need for the creditor to conduct a "willingness and ability" analysis of the consumer's capacity to make future payments (required under the F.F.I.E.C.'s retail classification guidance) and the need for the creditor to offer the appropriate workout arrangement (long term/ short term/ exact reduced rate) given the consumer's individual circumstances. Usually, the consumer's account is already at a default rate because of missed periodic payments and, invariably, the consumer is looking for immediate rate and fee relief. If creditors will lose the ability to reprice, they are less likely to offer workout programs. Delay due to the legal requirements that allow for such potential repricing disadvantages consumers at a particularly vulnerable time. Moreover, this will sound to the consumer as if the creditor is trying to "squeeze" the consumer one last time before providing relief and serves to discourage the consumer from entering into the arrangement. It also tacitly sends the message that there must be some "catch" to the arrangement as why else would Congress require the terms to be in writing before the creditor could reduce rates and certain fees? In fact, there is no downside, only benefit, for the consumer in the creditor immediately lowering rates and suppressing fees.

In the CARD Act, Congress clearly encourages workout arrangements, as evidenced both by the workout exception itself and the CARD Act's requirement to provide delinquent consumers with information about credit counseling services. Chase suggests that the Board better effectuate Congress' intent in encouraging consumers to enter into such arrangements, by either: 1) withdrawing its "*in writing*" requirement; or 2) modifying the requirement to simply provide that a creditor must also send the consumer a written confirmation within a reasonable period of time specifying the terms of the program and that the creditor cannot raise rates unless the consumer fails to make a payment after being provided the written confirmation. Additionally, should the consumer find anything "surprising" in those confirmation terms, the consumer could then withdraw from the arrangement, which is consistent with the scheme for entering into a credit card agreement under the CARD Act.

VI. ONLINE POSTING OF CREDIT CARD AGREEMENTS

Chase supports the rational approach the Board has taken to permit publicly available credit card agreements to be provided to the Board and posted on the internet. This procedure will facilitate comparison shopping by consumers. As proposed, the rule reduces potential confusion by focusing on agreements that are available to consumers. Further, we support the reasonable options the Board proposes either to make all agreements available on a creditor's public website or to provide an agreement upon request by existing customers with open accounts.

We have these specific comments.

First, in implementing the Web posting requirements, the Board has proposed two limitations. The proposed rule would exclude from the Act's posting requirements (i) agreements of creditors with fewer than 10,000 open credit card accounts and (ii) credit card agreements that are not currently offered to the public.

Chase believes that the rule should more clearly exclude agreements that have been offered only to a subset of the general public as part of product testing directed to targeted groups. Chase and other creditors test new strategies and products, including pricing terms, by offering credit card agreements to discrete target groups on a limited basis. Chase submits that creditors should not be required to post such agreements as this would not advance the primary purpose of the Act's posting requirement. Posting agreements available only to a small, targeted group might actually mislead potential consumers as to the availability of card product offerings. We believe this rule should require the posting of agreements that are truly available to the general public, such as those available online, at branches or in retail point of sale locations. In addition, posting such agreements would be problematic as it would make creditor testing strategies transparent to competitors and, thus, become a source of competitive data that would not otherwise be publically available.

We urge the Board to clarify its second proposed limitation on the Act's posting requirement to include, within the concept "agreements not currently offered to the public", those agreements supporting less than 5,000 open accounts that are part of a product test offered only to a limited group and which are otherwise not available to the general public. Such a clarification of the Board's proposed limitation would be consistent with the purposes of the CARD Act, minimize the possibility that the information provided would create consumer confusion, and reduce the potential for competitive harm.

Second, for the agreements provided to consumers with open accounts either on the web or upon request, we ask that the Board clarify that such agreements need only include pricing information as defined in Section 226.58(b)(4). The plain reading of the definition of "pricing information" at 226.58(b)(4) clearly indicates by reference to the 226.6 account opening disclosures that this information would only include rates and fees that would otherwise be required to be in an account opening agreement. It is clear from the definition that this information is the same for all credit card agreements provided under this section, including those provided the Board, posted on the creditor's public website, or provided to a consumer upon request. In Appendix N 3 (b) and (c), it is expressly stated the content should be the same as agreements provided to the Board, except that the pricing information must be specific to the consumer, the terms must be accurate within 60 days prior to the posting of the agreement or the consumer's request, and personally identifiable information is permitted. Therefore, pricing specific to a consumer will be the 226.6 pricing terms (i.e., introductory APRs, standard APRs, any penalty APRs, and fees), updated to reflect any changes to such terms since account opening. Such pricing should not include temporary promotional rates or rates that apply to protected balances. These rates are not part of the account opening agreement, and are disclosed each month on billing statements if there are balances at such a rates.

Further, to develop individually integrated agreements with all prior changes in terms included will require major revisions to the process by which we produce such agreements today. We believe many creditors generally provide a complete agreement when the account if first opened, and then provide separate change in terms notices as required by Regulation Z. Previously, it had not been a requirement to provide an integrated document. We urge the Board to permit creditors, at least for a temporary period not ending earlier than July 1, 2010, to supply amended terms by sending the last credit card agreement sent to the consumer and all subsequent change of terms notices.

Third, we believe the requirement to disclose a credit line should be removed from the Proposal. That term is not part of account opening disclosures, nor do most creditors include that information in the agreement. For the publicly available credit card agreements that would be used for new accounts, a credit line is not established until an application is approved, so there is nothing to disclose. A range of credit lines would be misleading since many applicants will not qualify or may qualify for a line that is in the lower end of the range. Therefore, disclosing credit lines in this context is not a reliable indication of the actual credit line a consumer would receive, and should not be a factor that consumers use to shop for credit. For the agreements provided to existing consumers with open accounts, the credit line and, more importantly, the available credit, are provided on each billing statement so such a disclosure is redundant. Further, this disclosure will be confusing to consumers if the existing credit line provided in their credit card agreement is different than the credit line reflected on their current statement.

Fourth, the Board has not determined the format in which credit card agreements can be submitted to the Board. Clearly, creditors cannot plan how to comply with the February 22, 2010 filing date without this information. Chase estimates that we would need to have finalized requirements from the Board by mid December to support an automated solution that would allow us to send a file electronically. We urge the Board to allow adequate flexibility to provide these submissions, particularly for early submissions to the Board. Further, and in any event, we urge that we be permitted to use the formats that will be used to post agreements on our own public website. We also urge the Board to permit an alternative submission for a creditor to simply provide each quarter a complete updated set of credit card agreements reflecting those agreements then available to the public. The Board should have updated agreements posted each quarter, and this would be an efficient way to accomplish that end. We believe that the Final Rule allow such a filing without the need to provide a list of agreements that are modified, withdrawn or added in any quarter. Such a list is burdensome, unlikely to matter to consumers seeking available options and, indeed, such a list is likely only to be interesting to competitors.

VII. DISCLOSURE OF "GO TO" RATES IN PROMOTIONAL RATE OFFERS

We seek clarification on situations where there are two promotional rates in effect at the same time. We urge the Board to clarify that when the first promotional rate expires, the balance subject to that rate can move to a more favorable rate (i.e., the other promotional rate) rather than the "go to" rate disclosed for the first promotional rate offer (e.g., the standard rate). In this case, we believe it should be compliant to disclose the standard APR "go to" rate in both promotional rate offers, so long as in both offers it is explained that upon expiration of the first offer the remaining balance from that offer will move to any other promotional rate in effect, and then, upon the expiration of the second offer, will move to the standard APR "go to" rate that is specifically disclosed in both offers. This is important as there are timing issues when different promotional offers are made, and the creditor does not know which offer(s) the consumer will accept or when they will be accepted. In such circumstances, it is impossible to know whether any particular promotional offer will move directly to the standard APR "go to" rate or to a more favorable promotional rate in effect for that category of balances. We believe that creditors should be permitted to disclose as the "go to" rate the standard rate that will apply to these balances after both promotional periods expire. The consumer would always know exactly what the "go to" rate would be since the creditor will have disclosed accurately the ultimate numerical "go to" rate, as well as each promotional rate that could apply and what rates the promotional rate balances will move to in the event multiple offers are accepted.

VIII. <u>SAME PAYMENT DUE DATE EACH MONTH</u>

Chase urges the Board to provide additional flexibility regarding the requirement to use a payment due date that is the "same day" each month as provided Section 106 of the CARD Act. There are huge operational efficiencies with more payment due dates because the payment receipt volume is spread more evenly across every day of the month. For Chase, permitting only 28 payment due dates will result in a shift of up to 1 million payments per day at the end of the month to the beginning of the following month, already a heavy volume period due to consumer bill paying schedules and habits. This shift will require staffing changes to accommodate the shift in volume. It will also likely increase our nightly holdover volume for payments received one day but processed the next, as well as cross-cycle adjustment volume, which will be a negative experience for our consumers. This change will also affect the distribution of consumer service calls related to payments and affect staffing for such calls.

The CARD Act does not require creditors to limit payment due dates to 28 dates/ billing cycles. Such a requirement can also disadvantage consumers and adds a substantial amount of operational complexity. As explained below, because the CARD Act requires the payment due date to be the "same day" (not the "same date"), the Board has flexibility to address this rule without requiring a fixed payment due date. Second, because every month but February is either 30 or 31 days long, the Board has chosen the exception (February) as the basis for its rule as opposed to the average number of days for the other eleven months of the year. It would be more logical if the Board used a 30-day month as the basis for its rule. Many consumers are accustomed to and often request payment due dates on the 29th, 30th or 31st of the month. There would be less disruption to consumers and there would continue to be more equal grace periods for all consumers if 30 payment due dates/billing cycles were permitted. Creditors would then have one exception, the month of February, to address.

In most cases the payment due date and grace period only vary by one day from billing cycle to billing cycle. With only 28 payment due dates and a fixed day for a payment due date, the grace period may vary by as many as three days. Some consumers will have more or less time to pay than others. We urge the Board to consider the advantage of treating consumers equally with regard to the number of days in the grace period, as well as a more flexible "fixed" payment due date rule that in all months (except February) varies a payment due date by only one day if at all.

Finally, the lack of flexibility in the Proposal will create challenges in complying with the 21-day rule for mailing statements, particularly when a federal holiday falls on a Monday and the United States Postal Service ("USPS") has limited services on the holiday. In addition, the USPS is considering a further reduction in their hours of operation, such as further limiting services between 7 am on Saturday until Sunday afternoon. Any reduced service by the USPS limits creditors' ability to comply with these new requirements. Therefore, at a minimum, there should be an allowance to vary payment due dates when the USPS causes a delay in a creditors' ability to mail statements or receive payments.

IX. THE BOARD SHOULD RECONCILE A POSSIBLE CONFLICT BETWEEN THE REGULATION AND REGULATION B.

The Proposal presently requires that a creditor consider a consumer's "income or assets" before granting credit or increasing a credit line. This language would appear to require nothing more or less than the consumer's own income. Chase is concerned that this provision may be in conflict with the Regulation B rules concerning the treatment of spousal income.

Section 226.51(a)(1) of the Proposal provides, "A card creditor must not open a credit card account...or increase any credit limit...unless the card creditor considers the ability of the consumer to make the required minimum payment periodic payments... based on the consumer's income or assets..." (emphasis added) Section 202.6(b)(5) of Regulation B provides, "A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis..." (emphasis added). These sections seemingly conflict, leaving creditors the Hobson's choice of picking the one with which it will comply.

Chase and other creditors already have an approach in place which we believe will alleviate this problem. For some time now, Chase has asked applicants to provide household, as opposed to individual, income on applications. That income figure is used for both approval and credit line increases. This accommodates the requirement to include spousal income for non-working spouses and also reflects modern-day society in which it is common for both spouses to work and pool their income for credit and other purposes. Many other creditors have done the same. Phrasing the question in this way allows the consumer to select the income on which she will rely to repay the debt that may be incurred. This addresses the Board's valid concern that creditors carefully consider the ability of consumers to repay debt while concomitantly permitting compliance with the anti-discrimination laws.

In addition, and from a safety and soundness perspective, as a by-product of this practice, Chase and other creditors lack knowledge of individual income of customers for the significant majority of their portfolios. Requiring individual income would greatly hamper the ability to increase lines as a hedge against those customers whose lines must be decreased, depriving creditors of a significant portfolio management tool. It would also prevent creditors from increasing credit to those customers who deserve more.

Of course, Chase is aware that the Board does have statutory responsibilities in this area. Chase has studied the CARD Act and finds that Section 109 of such Act provides that creditors merely "...consider(s) the ability of the consumer to make the required payments under the terms of such account." The Act, therefore, does not require in all circumstances the collection of individual income. That being the case, Chase urges the Board to modify its proposal to permit income on which the consumer wants a creditor to rely to be the proper standard on which to base credit decisions for purposes of the Proposal.

X. <u>REPORTING CREDIT CARD AGREEMENTS WITH COLLEGES TO THE BOARD</u>

The Board is proposing that creditors who have arrangements with colleges or universities report to the Board the contents of those agreements, including "the total dollar amount of any payments pursuant to a collage credit card agreement..." Section 226.57(d)(3)(iii). Chase applauds the Board's concern for the financial welfare of college students. We share that concern and do not use any of our arrangements with colleges to solicit students, choosing instead to solicit alumni of those colleges or universities.

We are, however, concerned with the Board's proposed requirement to disclose the fees paid under these arrangements. As the Board knows, the market for entering into agreements with colleges is highly competitive. Negotiations and their results are kept strictly confidential. Disclosing amounts paid to the colleges by issuers serves no public purpose. Presumably, these revenues are incorporated into whatever budgets are maintained by the schools. Chase assumes revenues received by colleges and universities are used for educational purposes.

We understand and support the collection and provision of this information by the Board to permit on-going analysis in this area. We also understand that the Board cannot in advance make FOIA determinations. However, we urge the Board to identify in the Final Rule that it expects to maintain such information as confidential and, in fact, to take all steps to keep such information confidential and report on it only in the aggregate so as not to artificially inflate the costs of these arrangements, and to provide advance warning to providers of the data should disclosure be likely to occur.

XI. <u>CONCLUSION</u>

Chase appreciates the opportunity to comment on the Proposal. We hope that our comments will further shape the Proposal in ways that help improve the clarity and consistency of disclosures, helping consumers make informed choices throughout the relationship they have with their bank. Please contact me or Andy Semmelman at 302-282-3737 with any questions about our comments using the contact information at the bottom of the first page.

Sincerely,

Frank R. Borchert, III